

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4247 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

RAFIK ABDUL SHAIKH

Versus

STATE OF GUJART

Appearance:

Mr.A.S.Dave for MR SUNIL C PATEL for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 1-5-96 passed by the District Magistrate, Valsad whereby the petitioner was detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 1-5-96 itself and since then the petitioner is under

detention lodged at Special Jail, Bhuj.

2. The present Special Civil Application was filed in this Court on 20-6-96 and on 21-6-96 Rule returnable on 15-7-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 3 criminal cases were registered against the petitioner under the Bombay Prohibition Act on 5-2-95, 30-11-95 and 14-2-96 involving the import of unauthorised liquor worth Rs.34,465/-. The detaining authority has expressed that the petitioner was engaged in the unauthorised business of liquor, he was a bootlegger and has become a problem for the public order because of his anti social activities of import and sale of country liquor. The petitioner has created an atmosphere of fear and terror on account of his anti social activities, has been beating innocent people and threatening them and the movement of the ladies in the area was not safe. Because of his fear no one was prepared to come openly against the petitioner and accordingly the provisions of S.9(2) of the Act has been invoked by the detaining authority. The petitioner has been thus detained as a bootlegger so as to prevent him from continuing with his anti social activities.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 1-5-96 passed by the District Magistrate, Valsad is hereby quashed and set aside and the petitioner's detention is

declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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